

(2019) 12 PAT CK 0077

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24563 Of 2019

Reena Singh

APPELLANT

Vs

Union Of India Through The Secretary And Ors

RESPONDENT

Date of Decision : 10-12-2019

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 54(16)

Citation : (2019) 12 PAT CK 0077

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : R.S. Ganguli, Uttam Kumar Mishra, Abhi Sarkar, Satyavrat Verma, Vishwa Mohan Kumar Sinha

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner, learned counsel for the Union of India and learned counsel for the respondents no.2 to 4.

2. The petitioner has moved the court for the following reliefs:

"1. That by this writ application the petitioner prays for the following reliefs:-

i) That the Respondents No. 2, i.e., Northern Coalfield Ltd, may be directed to pay family pension to the petitioner as per law.

ii) That the Respondents No.2 may be directed to pay arrear of family pension starting from the date of death of the husband of the petitioner.

iii) for granting any other relief(s) to which the petitioner is otherwise found entitled to."

3. The petitioner claims to be the wife of Saryu Singh, who retired from the employment of the respondent no. 2 on 30.04.1990. It is claimed that the first wife of Saryu Singh died on 28.12.1992 and the petitioner was married to him on 25.12.1994. The husband of the petitioner died on 17.07.2016. The petitioner's

claim for family pension has been refused by the authorities on the ground that the fresh P.P.O. was not filed by the husband in terms of Rules 54(16) of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the "Rules").

4. Learned counsel for the petitioner submitted that she being the wife of the deceased employee, is entitled to Pension upon his death and there being no other claimant, she is required to be granted full family pension. It was submitted that the first wife died after the retirement of the employee and the second marriage being performed thereafter, now only she being alive, she is entitled to 100% family pension. It was submitted that initially the authorities have asked her to furnish proof of her marriage and marriage certificate, but there being no requirement of formal marriage certificate she did not obtain the same, but all other collateral evidence, including PAN Card, AADHAR Card, certificate of the concerned Mukhiya etc. were furnished to the authorities, but her prayer has been rejected only on the technical ground that the employee having re-married after retirement had not intimated the event to the head of office, who has processed his pension paper at the time of retirement. It was submitted that it may have been a technical requirement, but the right to family pension accruing to a wife, cannot be denied or taken away from her.

5. Learned counsel for the Union of India submitted that family pension has been refused to the petitioner by a specific order which has not been challenged in the present writ application and, thus, no substantive relief can be granted to the petitioner. It was further submitted that it was incumbent upon the petitioner to produce valid documents to establish marriage, which essentially would be the marriage certificate, and in absence thereof, at least succession certificate is required to be furnished to show that she was a successor in the capacity of being the wife, not having been furnished, refusal cannot be said to be unwarranted.

6. Learned counsel for the respondents no. 2 to 4 submitted that as per Rule 54 (16) of the Rules, the procedure provided not having been followed, family pension cannot be granted to the petitioner treating her to be the wife.

7. Having considered the matter, the Court would refer to an order passed on 05.12.2019 in CWJC No. 24159 of 2019 (Raj Kumari Kunwar vs. The Union of India and others) in which under more or less similar circumstances, the Court had passed the following order:

"6. Having considered the matter, what has been stated by learned counsel for the petitioner, for which there is some evidence on record, the Court is persuaded to intervene in the matter. Though there may be rules governing the field which are technical in nature, but if a right exists, the Rules governing those rights cannot be so lightly read so as to frustrate the main claim, if the same is bona fide and genuine. In the present case, it is a fact that the petitioner married the deceased after the death of the first wife, just because of an omission by her

late husband to intimate such change to the authority concerned, cannot, in the considered opinion of the Court, be fatal for the claim otherwise sustainable and due in law. Such would be a travesty of justice and is also inequitable.

7. For reasons aforesaid, the writ petition stands disposed off with a direction to the respondent no. 2 to get the matter verified from the authorities, which includes the District Magistrate, Bhojpur, with regard to the veracity of the claim of the petitioner. If the report is in favour of the petitioner, necessary orders with regard to grant of family pension and also payment of the remaining retiral dues of her husband shall be made to her within three months from the enquiry report being made available to the respondent no. 2.

8. As the matter is urgent, the Court deems it appropriate to direct the respondent no. 2 to refer the matter for enquiry within one month from the date of production of a copy of this order before him. Upon doing so, a direction is issued to the authority, to which such reference is made, to ensure that the enquiry is conducted and report sent to the respondent no. 2 within two months from the date of the respondent no. 2 making a request to the concerned authority for conducting the enquiry. The respondent no. 2 shall also forward a copy of this order to the concerned authority while making request for such enquiry. On the basis of the report submitted, consequences, as indicated above, shall follow.

9. The Court would indicate that in enquiry, all aspects would be gone into as to who is still alive and may have claim in family pension/retiral benefits of the late employee, including offspring(s) of the first wife, if any."

8. Thus, the Court is inclined to issue similar directions in the present case also.

9. Accordingly, the present writ application stands disposed off in terms of directions contained in paragraphs no. 6 to 9 of the aforesaid order, as quoted above, with the only change that in place of respondent no. 2 in the said case, it will be substituted by respondent no. 3 to whom such direction is being issued and with regard to District Magistrate, Bhojpur, the same shall be substituted by District Magistrate, Vaishali.